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GEORGE ACKERSON, MARY STRANAHAN,
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MOTOR WORKS LLC,

Case No.: 08-CV-03608 JW

Plaintiff,

VS.

SAFER TECHNOLOGIES, INC., CERMA
TECHNOLOGY, INC., GEORGE
ACKERMAN, MARY STRANAHAN,
NICHOLAS STREIT, TIM STREIT and
EDWARD HALBACH.

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S AMENDED BILL OF COSTS

Local Rule 54-2

Pursuant to Local Rule 54-2, defendants Safer Technologies, Inc., Cerma Technology, Inc., George Ackerson, Mary Stranahan, Nicholas Streit and Edward Halbach (“defendants”) object to the following items of cost claimed by plaintiff:

1. Notice of Stipulation Regarding “Fees for Service of Summons and Subpoena”

The parties stipulate that the allowable, recoverable costs for this category are \$420.

[Declaration of Kristen E. Drake (“Drake Decl.”) at ¶ 2.]

2. Objection to “Fees for Printed or Electronically Recorded Transcripts Necessarily Obtained For Use in The Case” in the Amount of \$3,161.50

Grounds:

In its July 26, 2010 Order, this Court denied plaintiff's claimed reporter's transcripts

1 costs. Yet, plaintiff is again requests these costs in its Amended Cost Bill. Such request is an
 2 improper attempt at reconsideration of the court's order and should be denied.

3 As stated in defendants' original objections, Civil Local Rule 54-3(b) specifies the two
 4 circumstances in which the cost of a reporters' transcript is recoverable: "(1) The cost of
 5 transcripts necessarily obtained for an appeal is allowable; (2) The cost of a transcript of a
 6 statement by a Judge from the bench which is to be reduced to a formal order prepared by counsel
 7 is allowable;" and further provides that "(3) The cost of other transcripts is not normally
 8 allowable unless, before it is incurred, it is approved by a Judge or stipulate to be recoverable by
 9 counsel." As this Court previously ruled, none of these circumstances is applicable here. None
 10 of the cases cited by plaintiff are Ninth Circuit cases and none apply Civil Local Rule 54-3(b).

11 In addition, defendants note that plaintiff's \$3,161.50 in transcript costs includes
 12 expedited costs of \$1,610.00 and apparently daily costs of \$1,551.50. In comparison, defendants'
 13 counsel obtained a transcript of the afternoon session of the third day of the trial for \$107.10.
 14 [Drake Decl. at ¶ 3, Exhibit "A" thereto.] Regardless, plaintiff's claimed reporter's transcripts
 15 costs are not authorized and should be denied.

16 **3. Objection to "Fees for Witnesses" in the Amount of \$3,732.80**

17 Defendants do not contest the \$40 per person attendance fees for Dea Shores, John
 18 Sapherstein and Jeffrey Gonzales, or Mr. Gonzales' \$175.40 airfare or Mr. Sapherstein's \$5
 19 airfare. Defendants do contest the remaining \$3,732.80 in witness fees.

20 Grounds:

21 a) **John Murray**

22 Defendants contest the \$1,973.00 in witness fees for John Murray as he is the plaintiff-
 23 representative in this action. Parties may not recover witness fees for their own trial attendance.
Barber v. Ruth (7th Cir. 1993) 7 F.3d 636, 646; *Phillips v. Bartoo* (ND IL 1995) 161 FRD 352,
 24 354. In this case, as plaintiff is an entity and can only appear through an individual
 25 representative, Mr. Murray's "witness" fees should be disallowed.

26 Notwithstanding that recovery of witness fees for Mr. Murray would be inappropriate in
 27 this case, plaintiff's calculation of witness fees directly contradicts its own attached receipts. For
 28

1 example, plaintiff's counsel declares that "Mr. Murray incurred economy class airfare expenses
 2 of \$556.60 (1/3 of airfare Dallas to San Jose, as per attached Cheap Tickets confirmation)."
 3 [Weems Declaration at ¶ 10.] But, the attached receipt clearly states that the Cheap Tickets
 4 reservation includes "flights, 1 hotel reservation and car rental." [2nd, 4th and 5th pages attached to
 5 Weems Declaration and labeled with handwritten notation "p1 of 4."] Moreover, the "flights" are
 6 for 3 individuals: John Murray, Michael Shoars and Deanna Shoars. [3rd page attached to Weems
 7 Declaration and labeled with handwritten notation "p 2 of 4."] Mr. Shoars did not testify at the
 8 trial. Witness fees for Mr. Murray should be excluded in their entirety and the claimed lodging
 9 per diem of \$132*3 is contradictory to plaintiff's own evidence that the reservation included
 10 lodging.

11 **b) Dea Shores**

12 Defendants contest three days of witness fees for Ms. Shores when plaintiff could have
 13 had her testify earlier. Further, apparently, Ms. Shores made a 14-hour drive from Iowa to Texas
 14 in order to board a plane in Texas bound for San Jose, California. Plaintiff seeks reimbursement
 15 for 1,726 miles, totaling \$863. Defendants object to the mileage charge as driving 14 hours to
 16 board a plane is unreasonable. Defendants further object to the itemized airfare and lodging totals
 17 in Paragraph 17 of the Weems Declaration as the receipt provided clearly states that the Cheap
 18 Tickets reservation includes "flights, 1 hotel reservation and car rental." [2nd, 4th and 5th pages
 19 attached to Weems Declaration and labeled with handwritten notation "p1 of 4."] Moreover, the
 20 "flights" are for 3 individuals: John Murray, Michael Shoars and Deanna Shoars. [3rd page
 21 attached to Weems Declaration and labeled with handwritten notation "p 2 of 4."]

22 **c) Jon Sapherstein**

23 The actual cost of Mr. Sapherstein's ticket from Los Angeles was \$5.00 as he chose to use
 24 his frequent flier miles. 28 U.S.C. section 1821(c)(1) only allows recovery of "the actual
 25 expenses" incurred and "a receipt or other evidence of actual cost shall be furnished." The actual
 26 cost of the flight was \$5.00 and no additional monies should be awarded. Further, 28 U.S.C.
 27 section 1821(d)(1) provides for a subsistence allowance only "when an overnight stay is required
 28 at the place of attendance because such place is so far removed from the residence of such witness

as to prohibit return thereto from day to day.” Travel between southern California and northern California does not require an overnight stay and no receipt is provided. Thus, defendants object to any subsistence charges.

d) Jeffrey Gonzales

5 Mr. Gonzales flew from San Diego to San Jose. Again, as travel between southern
6 California and northern California does not require an overnight stay and no receipt is provided,
7 defendants object to any subsistence charges.

8 | 4. **Objection to “Other Costs” in the Amount of \$560.20**

Grounds:

10 Although plaintiff identifies the “other costs” as “airfare (DFW-SJO) Plaintiff Rep. Attend
11 Court Ordered Mediation”, the \$560.20 actually includes “lodging per diem” and “meals per
12 diem.” [Weems Declaration at ¶ 13, lines 23-27.] Nevertheless, 28 U.S.C. § 1821 only applies to
13 witnesses and an individual participating in a mediation session is not a sworn witness. Costs in
14 this category should be disallowed.

17 || Dated: August 20, 2010

CRAIGIE, McCARTHY & CLOW

/s/ James M. Hanavan

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